

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 617

Introduced by Senator Block

February 27, 2015

An act to ~~amend Section 17 of~~ *add Section 19.5 to* the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Block. Crimes.

Existing law defines crimes as infractions, misdemeanors, or felonies. Existing law provides that when a crime is punishable in the discretion of the court as a felony or a misdemeanor, it is a misdemeanor for all purposes if certain circumstances are met. Existing law provides that when a defendant is committed to the Division of Juvenile Justice for a crime that is punishable in the discretion of the court as a felony or a misdemeanor punishable by incarceration in a county jail not exceeding one year, upon discharge of the defendant from the division, the crime is a misdemeanor for all purposes.

This bill would provide, subject to exceptions, that misdemeanors punishable by a maximum term of confinement not exceeding 6 months in jail may be charged as a misdemeanor or an infraction, in the discretion of the prosecuting attorney, as specified. The bill would provide that for a misdemeanor offense that is charged as an infraction under those provisions, all of the provisions of the misdemeanor offense, including fines or penalties, are applicable to the infraction and would be imposed as if the offense were charged as a misdemeanor.

~~Under existing law, a felony is a crime that is punishable with death, or by imprisonment in the state prison, or by imprisonment in a county jail for more than one year. Under existing law, every other crime or~~

public offense is a misdemeanor, except those offenses that are classified as infractions.

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19.5 is added to the Penal Code, to read:

2 19.5. (a) The Legislature finds and declares that there are
3 low-level misdemeanor offenses that, at the discretion of the
4 prosecuting attorney, and based on the facts of the committed
5 offenses, the lack of prior delinquency or criminality of the
6 offender, and the lack of the offender's need for supervision, can
7 be effectively prosecuted as infractions. The Legislature further
8 finds and declares that reducing these misdemeanors to infractions
9 will not compromise public safety, and that diverting low-level
10 misdemeanor offenders away from the criminal justice system and
11 the stigma associated with it will avoid costs associated with
12 protracted court involvement, jury trials, attorney representation,
13 confinement, and probation involvement.

14 (b) Except as provided by express statutory provisions providing
15 an alternative punishment or procedure, a crime punishable as a
16 misdemeanor with a maximum term of confinement not exceeding
17 six months in jail may be charged as a misdemeanor or an
18 infraction at the discretion of the prosecuting attorney.

19 (c) A crime charged as a misdemeanor shall not be reduced to
20 an infraction except at the discretion of the prosecuting attorney
21 pursuant to this section, or pursuant to express statutory provisions
22 providing an alternative punishment or procedure. The prosecuting
23 attorney may reduce the misdemeanor charge to an infraction
24 pursuant to this section at any time before trial.

25 (d) A person charged with an infraction that was reduced from
26 a misdemeanor pursuant to this section is subject to Section 19.6.

27 (e) All statutory provisions of a misdemeanor that is charged
28 as an infraction pursuant to this section, including, but not limited
29 to, fines and penalties, apply to the infraction and shall be imposed
30 as if the offense had been charged as a misdemeanor.

31 (f) This section shall not apply to the following offenses:

- 1 (1) *A misdemeanor firearms violation.*
- 2 (2) *A misdemeanor sex offender registration violation.*
- 3 (3) *A misdemeanor child endangerment or child abuse violation.*
- 4 (4) *A misdemeanor elder abuse violation.*
- 5 (5) *A misdemeanor domestic violence violation.*
- 6 (6) *A misdemeanor driving-under-the-influence violation.*
- 7 (7) *A misdemeanor sex offense.*

8 SECTION 1. Section 17 of the Penal Code is amended to read:

9 17. (a) A felony is a crime that is punishable with death, by
10 imprisonment in the state prison, or notwithstanding any other
11 provision of law, by imprisonment in a county jail under the
12 provisions of subdivision (h) of Section 1170. Every other crime
13 or public offense is a misdemeanor except those offenses that are
14 classified as infractions.

15 (b) When a crime is punishable, in the discretion of the court,
16 either by imprisonment in the state prison or imprisonment in a
17 county jail under the provisions of subdivision (h) of Section 1170,
18 or by fine or imprisonment in the county jail, it is a misdemeanor
19 for all purposes under the following circumstances:

20 (1) After a judgment imposing a punishment other than
21 imprisonment in the state prison or imprisonment in a county jail
22 under the provisions of subdivision (h) of Section 1170.

23 (2) When the court, upon committing the defendant to the
24 Division of Juvenile Justice, designates the offense to be a
25 misdemeanor.

26 (3) When the court grants probation to a defendant without
27 imposition of sentence and at the time of granting probation, or
28 on application of the defendant or probation officer thereafter, the
29 court declares the offense to be a misdemeanor.

30 (4) When the prosecuting attorney files in a court having
31 jurisdiction over misdemeanor offenses a complaint specifying
32 that the offense is a misdemeanor, unless the defendant at the time
33 of his or her arraignment or plea objects to the offense being made
34 a misdemeanor, in which event the complaint shall be amended
35 to charge the felony and the case shall proceed on the felony
36 complaint.

37 (5) When, at or before the preliminary examination or prior to
38 filing an order pursuant to Section 872, the magistrate determines
39 that the offense is a misdemeanor, in which event the case shall

1 proceed as if the defendant had been arraigned on a misdemeanor
2 complaint.

3 ~~(e) When a defendant is committed to the Division of Juvenile~~
4 ~~Justice for a crime punishable, in the discretion of the court, either~~
5 ~~by imprisonment in the state prison or imprisonment in a county~~
6 ~~jail under the provisions of subdivision (h) of Section 1170, or by~~
7 ~~fine or imprisonment in the county jail not exceeding one year,~~
8 ~~the offense shall, upon the discharge of the defendant from the~~
9 ~~Division of Juvenile Justice, thereafter be deemed a misdemeanor~~
10 ~~for all purposes.~~

11 ~~(d) A violation of any code section listed in Section 19.8 is an~~
12 ~~infraction subject to the procedures described in Sections 19.6 and~~
13 ~~19.7 under either of the following circumstances:~~

14 ~~(1) The prosecutor files a complaint charging the offense as an~~
15 ~~infraction unless the defendant, at the time he or she is arraigned,~~
16 ~~after being informed of his or her rights, elects to have the case~~
17 ~~proceed as a misdemeanor.~~

18 ~~(2) The court, with the consent of the defendant, determines~~
19 ~~that the offense is an infraction in which event the case shall~~
20 ~~proceed as if the defendant had been arraigned on an infraction~~
21 ~~complaint.~~

22 ~~(e) Nothing in this section authorizes a judge to relieve a~~
23 ~~defendant of the duty to register as a sex offender pursuant to~~
24 ~~Section 290 if the defendant is charged with an offense for which~~
25 ~~registration as a sex offender is required pursuant to Section 290,~~
26 ~~and for which the trier of fact has found the defendant guilty.~~